HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

WRIT PETITION Nos:26041, 26043, 26066 & 26069 OF 2007

Dated:14.12.2007

Between:

M/s. Venkat Pharma Limited rep., by its Managing Director, Ch. Sri Saila Babu, Banjara Hills, Road No.2, Hyderabad.

..Petitioner

And

The Deputy Commissioner of Commercial Taxes No.II Division, Vijayawada, Krishna District.

..Respondent.

(Parties are one and the same in all the above writ petitions)

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COMMON ORDER: (Per Hon'ble Smt. Justice T. Meena Kumari)

The above writ petitions are filed by the petitioner seeking to declare the assessment orders dated 24.11.2005 in respect of the assessment years-1999-2000, 2000-2001, 2001-2002 and 2002-2003 passed by the respondent, as illegal and to set aside the same and to direct the authorities to take into consideration the quantity details in the light of production capacity of the manufacturing unit and also the export sales while making the assessment.

Since the parties and the controversy involved in all the writ petitions are one and the same, they are being disposed of by a common order.

It is the case of the writ petitioner that the petitioner filed returns under the APGST Act for the respective assessment years referred to above and the CTO has assessed the company to a nil amount. However, the said assessments were reviewed by the Deputy Commissioner and in that connection, show cause notices have also been issued to the petitioner, for which, the petitioner sought for extension of time on the ground that auditors were busy with audit work at the relevant point of time. Meanwhile, the Directorate of Revenue Intelligence conducted search on the business of the company and seized all the records, so that, the petitioner could not

give a reply nor could file its objections. But without considering the request for extension of time, the impugned assessment orders have been passed on 24.11.2005 on the ground that the petitioner has not filed any objections nor given any reply. Hence, the petitioner carried the matters in respective appeals to the Sales Tax Appellate Tribunal, Visakhapatnam and the same are pending.

The respondent filed counter-affidavits.

Heard the learned Counsel appearing for the petitioner as well as the learned Special Standing Counsel for Commercial Tax and perused the material available on record.

It is the case of the petitioner that the orders impugned are exparte one and the same have been passed without affording any opportunity to the petitioner enabling to file its objections and therefore, the orders impugned are liable to be set aside.

On the other hand, the learned Special Standing Counsel for the respondent contended that in spite of granting sufficient time on the request made by the petitioner from time to time, the petitioner could not file its objections and therefore, it cannot be said that the orders impugned are exparte one and hence, the writ petitions are liable to be dismissed.

The averments in the counter-affidavit goes to show that on an earlier occasion, the petitioner has approached this Court questioning the revision order dated 24.11.2005 passed by the respondent for the assessment year 2002-2003 and the said writ petition was dismissed. But, however, liberty was granted to the petitioner to avail the remedies that are available under law including appeal. Hence, the petitioner

approached the Apex Court by filing SLP No.8816 of 2006 and the said SLP was dismissed on 12.7.2007 directing the petitioner to file a statutory appeal before the appellate-authority.

The facts that remained undisputed are that for the assessment years 1999-2000, 2000-2001, 2001-2002 & 2002-2003, there was NIL assessment and that in reply to the notice issued to the petitioner pursuant to the revised assessment orders, the petitioner made representations dated 25.10.2005 seeking for extension of time for filing objections.

According to the petitioner, subsequent to its request for extension of time for filing the objections, on 27.10.2005 the Directorate of Revenue Intelligence seized all the records, as a result of which, the petitioner could not file its objections. On the ground of non-filing of the objections, the impugned orders have been passed.

On a perusal of the material available on record, it is pertinent to note that it is a case of nil assessment. But on the revised order, the assessment for the respective years was made. A perusal of the impugned orders goes to show that the orders have been passed on the ground of non-filing of the objections in time. However, it is the case of the petitioner that due to seizure of records, the objects could not have been filed and therefore, the failure on the part of the petitioner in producing the records at the relevant point of time, is neither intentional nor wanton.

Having regard to the peculiar facts and circumstances of the case, We are of the opinion that the reason assigned by the petitioner appears to be a bonafide one. But however, in view of the pendency of

the appeals before the Tribunal, without expressing any opinion as to the revised assessment, We feel it appropriate to direct the Tribunal to dispose of the appeals within a period of eight (8) weeks from the date of receipt of a copy of the order.

At this stage, the learned Counsel for the petitioner submitted that the property of the petitioner was under attachment and an auction notice was also issued in respect of the same by the authorities, according which, the proposed auction will be held on 17.12.2007.

Having regard to the above submission and in view of the fact that the appeals are pending, We make it clear that no coercive steps shall be taken in pursuant to the auction notice till the disposal of the appeals.

However, it is made clear that the petitioner shall not create any third party rights over the property in question. In view of the peculiar circumstances of the case, this order shall not be a precedent in future cases.

Subject to the above direction, these writ petitions are disposed of.

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Justice T. Meena Kumari

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Justice G. Rohini

Date: 14th December, 2007
Nn/Gurc.

HONOURABLE MRS. JUSTICE T.MEENA KUMARI
&
HONOURABLE MS JUSTICE G. ROHINI

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(Common order delivered by the Hon'ble Smt. Justice T. Meena Kumari)

14/12/2007